

Introduced by Senator Pavley

February 24, 2009

An act to repeal and add Section 532f of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 239, as introduced, Pavley. Mortgage fraud.

Existing law provides that a person, other than the loan applicant, who makes false financial statements in connection with an application for a loan to be secured by real property is guilty of a misdemeanor, punishable by a fine not exceeding \$10,000, or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment; and by restitution to the victim, as specified.

This bill would delete this provision and provide instead for the offense of mortgage fraud, as defined, a violation of which would be a felony punishable by imprisonment in the state prison for 2, 3, or 4 years. A person who engages in a pattern of mortgage fraud, as defined, would be subject to a penalty enhancement of an additional 2, 3, or 5 years in the state prison. By revising existing crimes and creating new crimes and enhancements, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 532f of the Penal Code is repealed.

~~532f. (a) (1) A person, other than the loan applicant, who commits a public offense under paragraph (1), (2), or (3) of Section 532a in connection with an application for a loan to be secured by real property is guilty of a misdemeanor, punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.~~

~~(2) The court shall determine the amount of any economic loss to a victim caused by the criminal conduct of the defendant and shall, to the extent possible, order the defendant to make restitution to the victim in that amount.~~

~~(b) An applicant for a loan to be secured by real property who violates paragraph (1), (2), or (3) of Section 532a is guilty of a misdemeanor, punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in a county jail not exceeding six months, or by both the fine and imprisonment.~~

~~(c) This section shall not be construed to preclude the application of any other law that may apply to a transaction.~~

SEC. 2. Section 532f is added to the Penal Code, to read:

532f. (a) A person commits mortgage fraud if, with the intent to defraud, the person does any of the following:

(1) Knowingly makes any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process.

(2) Knowingly uses or facilitates the use of any deliberate misstatement, misrepresentation, or omission, knowing the same to contain a misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process.

(3) Receives any proceeds or any other funds in connection with a mortgage loan closing that such person knew resulted from a violation of paragraph (1) or (2) of this subdivision.

(4) Files or causes to be filed with the recorder of any county in connection with a mortgage loan transaction any document the

1 person knows to contain a deliberate misstatement,
2 misrepresentation, or omission.

3 (b) An offense involving mortgage fraud shall not be based
4 solely on information lawfully disclosed pursuant to federal
5 disclosure laws, regulations, and interpretations related to the
6 mortgage lending process.

7 (c) (1) Notwithstanding any other provision of law, an order
8 for the production of any or all relevant records possessed by a
9 real estate recordholder in whatever form and however stored may
10 be issued by a judge upon a written ex parte application made
11 under penalty of perjury by a peace officer stating that there are
12 reasonable grounds to believe that the records sought are relevant
13 and material to an ongoing investigation of a felony fraud violation.

14 (2) The ex parte application shall specify with particularity the
15 records to be produced, which shall relate to a party or parties in
16 the criminal investigation.

17 (3) Relevant records may include, but are not limited to,
18 purchase contracts, loan applications, settlement statements, closing
19 statements, escrow instructions, payoff demands, disbursement
20 reports, and checks.

21 (4) The ex parte application and any subsequent judicial order
22 may be ordered sealed by the court upon a sufficient showing that
23 it is necessary for the effective continuation of the investigation.

24 (5) The records ordered to be produced shall be provided to the
25 peace officer applicant or his or her designee within a reasonable
26 time period after service of the order upon the real estate
27 recordholder.

28 (d) (1) Nothing in this section shall preclude the real estate
29 recordholder from notifying a customer of the receipt of the order
30 for production of records, unless a court orders the real estate
31 recordholder to withhold notification to the customer upon a
32 finding that this notice would impede the investigation.

33 (2) If a court has made an order to withhold notification to the
34 customer under this subdivision, the peace officer who or law
35 enforcement agency that obtained the records shall notify the
36 customer by delivering a copy of the ex parte order to the customer
37 within 10 days of the termination of the investigation.

38 (e) (1) Nothing in this section shall preclude the real estate
39 recordholder from voluntarily disclosing information or providing
40 records to law enforcement upon request.

(2) This section shall not preclude a real estate recordholder, in its discretion, from initiating contact with, and thereafter communicating with and disclosing records to, appropriate state or local agencies concerning a suspected violation of any law.

(f) No real estate recordholder, or any officer, employee, or agent of the real estate recordholder, shall be liable to any person for either of the following:

(1) Disclosing information in response to an order pursuant to this section.

(2) Complying with an order under this section not to disclose to the customer the order, or the dissemination of information pursuant to the order.

(g) Any records required to be produced pursuant to this section shall be accompanied by an affidavit of a custodian of records of the real estate recordholder or other qualified witness which states, or includes in substance, all of the following:

(1) The affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records.

(2) The identity of the records.

(3) A description of the mode of preparation of the records.

(4) The records were prepared by the personnel of the business in the regular course of business at or near the time of an act, condition, or event.

(5) Any copies of records described in the order are true copies.

(h) A person who violates this section is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years.

(i) (1) A person who engages in a pattern of mortgage fraud shall, upon conviction of two or more felony violations of this section in a single criminal proceeding, in addition and consecutive to the punishment prescribed for the offenses of which he or she has been convicted, be punished by a penalty enhancement of an additional two, three, or five years in the state prison.

(2) This enhancement shall be imposed only once in a single criminal proceeding.

(3) The additional prison term provided for in this subdivision shall not be imposed unless the facts set forth in this subdivision are charged in the accusatory pleading and admitted or found to be true by the trier of fact.

1 (4) The additional prison term provided for in this subdivision
2 shall be in addition to any other punishment provided by law and
3 shall not be limited by any other provision of law.

4 (j) For the purposes of this section, the following terms shall
5 have the following meanings:

6 (1) “Person” means any individual, partnership, firm,
7 association, corporation, limited liability company, or other legal
8 entity.

9 (2) “Mortgage lending process” means the process through
10 which a person seeks or obtains a mortgage loan, including, but
11 not limited to, solicitation, application, origination, negotiation of
12 terms, third-party provider services, underwriting, signing and
13 closing, and funding of the loan.

14 (3) “Mortgage loan” means a loan or agreement to extend credit
15 to a person that is secured by a deed of trust or other document
16 representing a security interest or lien upon any interest in real
17 property, including the renewal or refinancing of the loan.

18 (4) “Real estate recordholder” means any person, licensed or
19 unlicensed, that meets any of the following conditions:

20 (A) Is a title insurer that engages in the “business of title
21 insurance” as defined by Section 12340.3 of the Insurance Code,
22 an underwritten title company, or an escrow company.

23 (B) Functions as a broker or salesperson by engaging in any of
24 the type of acts set forth in Sections 10131, 10131.1, 10131.2,
25 10131.3, 10131.4, and 10131.6 of the Business and Professions
26 Code.

27 (C) Engages in the making or servicing of loans secured by real
28 property.

29 (5) “Pattern of mortgage fraud” means engaging in at least two
30 felony violations of this section that involve two or more properties
31 and that have the same or similar purpose, result, principals,
32 victims, or methods of commission, or are otherwise interrelated
33 by distinguishing characteristics, and that are not isolated events.

34 SEC. 3. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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